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January 3, 2019

U.S. Magistrate Judge Daniel J. Stewart
James T. Foley U.S. Courthouse
445 Broadway - 4th Floor
Albany, New York 12207

By: ECF

Re: Cinthia Thevenin, et al. v. The City of Troy, et al.
Docket No: 16-CV-01115(DJS)

Dear Judge Stewart:

The firm of Harfenist Kraut and Perlstein, LLP along with Hach & Rose, LLP, represents the Plaintiffs in this matter. Defendants are represented by FitzGerald Morris Baker Firth, P.C. As the Court is aware, this matter is scheduled for a discovery status conference tomorrow at 10 AM.

The parties write to respectfully request that the Court utilize this conference to address an issue which has recently arisen in connection with the examination of certain physical evidence which is currently in the possession of the Defendants.

As the Court may recall, during the parties' last conference with the Court, we reported that Craig Fries of PSI had begun to comply with Plaintiff's subpoena and that we were anticipating additional materials. Plaintiffs We received Mr. Fries last production on December 6, 2018 and are satisfied with his production.

The same date as we received the final production, I reached out to Mr. Aspland to discuss the potential release of the bullets to Plaintiff's expert. Although there was some initial discussion of Plaintiff's expert potentially examining the bullets at a lab in the Albany area, by December 11, 2018, our expert had informed us that he wanted to examine the items in his own laboratory in Westchester County and a request was made to enter into an agreement allowing for the release of the materials into his custody.¹

Thereafter, the parties continued to discuss the issue and the parameters of Plaintiff's request, culminating in a letter of December 26, 2018 which identified the specific items which Plaintiff sought to be produced to Plaintiff's expert and identified potential dates

¹ A copy of the parties' e-mail exchange of December 11-12 is appended hereto as Exhibit "A".

HKP

U.S. Magistrate Daniel J. Stewart

January 3, 2019

Page 2 of 2

thereafter when Plaintiff's expert would be free to travel to Troy and view the vehicles involved in the incident.²

Unfortunately, the parties have now reached an impasse as Defendants advised yesterday that they are "not comfortable with releasing the projectiles."³

As this issue arose literally on the eve of an existing the parties would like to utilize tomorrow's conference to address the issue and if necessary, set a briefing schedule during the conference to deal with their concerns.

The parties thank the Court for its attention to this matter and look forward to discussing this with the Court during tomorrow's conference.

Respectfully Submitted
HARFENIST KRAUT & PERLSTEIN, LLP
Attorneys for Plaintiff

By: Neil Torczyner
Neil Torczyner

Encl

Cc: All appearing counsel via ECF

² A copy of the December 26, 2018 letter is appended hereto as Exhibit "B".

³ A copy of the parties January 2, 2019 email exchange is appended hereto as Exhibit "C".